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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,352	07/22/2003	Christopher Patrick Abbey	ROC920030219US1	7582
46296	7590	02/06/2006	EXAMINER	
MARTIN & ASSOCIATES, LLC P.O. BOX 548 CARTHAGE, MO 64836-0548			DOAN, DUC T	
			ART UNIT	PAPER NUMBER
			2188	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,352

Applicant(s)

ABBEY ET AL.

Examiner

Duc T. Doan

Art Unit

2188

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-9, 11-14, 21-23, 25-28, 37, 40, 41, 43, 44, 47 and 48 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 7-9, 11-14, 21-23, 25-28, 37, 40-41, 43-44, 47-48 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAIL ACTION

Status of Claims

Response to Amendment

Claims 1-48 were pending in this application. In response to the last Office Action, Claims 1-6,15-20,24,29-36,38-39,42,45-46 were canceled. Claims 7,21,37,44 were amended. As a result, claims 7-9,11-14,21-23,25-28,37,40-41,43-44,47-48 are remain pending in this application.

Claims 7-9,11-14,21-23,25-28,37,40-41,43-44,47-48 rejected.

All rejections and objections not explicitly repeated below are withdrawn.

Applicant's arguments filed 12/2/05 have been fully considered but they are not persuasive.

Therefore, the rejections from the previous office action are respectfully maintained, with changes as needed to address the amendments

Claim Rejection 35 USC 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 37,40-41,44,47-48 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As for claim 37, the claim describes a program product comprising “a recordable computer readable signal bearing media bearing the resource detection mechanism”, The claim describes the bearing of the resource detection mechanism. However, Examiner cannot find in the claim any recitation describing of the “instructions” that when executed, performing certain mechanism. Thus the claim language does not make the computer program product statutory.

Claim 44 is rejected based on the same rationale as described in above paragraphs.

All dependent claims are rejected as having the same deficiencies as the claims they depend from.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7-9,11-14,21-23,25-28,37,40-41,43-44,47-48 are rejected under 35 U.S.C. 102 (b) as being anticipated by Zalewski (US Pub 2002/0052914).

As for claim 7, the claim recites, an apparatus comprising: at least one processor (Fig 1: #108); a memory coupled to the at least one processor (Fig 1: #120), a plurality of logical partitions defined on the apparatus (Fig 2: #202, #204 partitions 1,2; page 4 paragraphs 42,43); a persistent resource database residing in the memory (Zalewski describes the associations of resources to partitions are stored in non-volatile RAM and the data is booted into memory during

subsequence reboots; page 5 paragraph 53-55 using HWRPB during booting of an instant OS; page 13 paragraphs 197,247,248 data base APMP includes HWRPB information), the resource database including a list of resources owned by each of the plurality of logical partitions, where the resources were detected in previous power on cycles of the apparatus (paragraph 54, HWRPB information is used during subsequent boots); and a resource detection mechanism residing in the memory and executed by the at least one processor, the resource detection mechanism determining from the resource database a set of required resources owned by a selected logical partition (paragraphs 55 describes console program communicates with OS using information in the HWRPB), detecting each resource as the resource is initialized, detecting when at least one required resource for the selected logical partition is not powered up, initiating power up of the at least one required resource that is not powered up. and starting the selected logical partition when all required resources owned by the selected logical partition have been detected (paragraph 54 describes using the list of resources saved previously to allow for an automatic configuration during subsequence reboot; Zalewski clearly describes during the reboot, the resources are being validated and if enough “required” resource, for example certain amount of memory, certain CPU resources are assigned to a partition; paragraph 53 lines 20-26; if so, the OS of that partition is allowed to run; paragraph 54. Zalewski further describes the resources are monitored to determine when they are powered up, the statutes are then recorded as available for the particular partition in the HRPB structure; paragraph 57).

As for claim 8, Zalewski describes wherein the selected resource is a hardware resource (sharing CPUs, memory, i/o hardware; Zalewski’s paragraphs 10-14).

As for claim 9, Zalewski describes wherein the selected resource is a software resource (sharing data based resource such as HWRPB configuration information; Zalewski's page 4, paragraphs 43,44; page 5 paragraph 56).

As for claim 11, the claim recites wherein the resource detection mechanism initiates power off of a plurality of resources owned by the selected logical partition in response to the selected logical partition being powered off; The claim rejected based on the same rationale as in the rejection of claim 7. Zalewski describes the CPUs logically assigned to each partition can be turned "on and "off" dynamically (Zalewski's column 2, paragraph 11). Zalewski further describes the console program provide a mechanism to remove a resource such as a CPU from available CPUs within a partition in response to a shutdown for the instant operating system running in that partition; Zalewski's paragraph 56.

As for claim 12, it is rejected based on the same rationale as in the rejection of claims 7,10,11. Zalewski further describes the "list of resources owned by each of logical partitions" in the form of configuration tree structure (Zalewski's page 4, paragraphs 54,54).

Claims 13,22,27,40,47 rejected based on the same rationale as in the rejection of claim 8.

Claims 14,23,28,,41,48 rejected based on the same rationale as in the rejection of claim 9.

As for claim 21, the claim rejected based on the same rationale as in the rejection of claims 12,4-6.

Claims 25,43 rejected based on the same rationale as in the rejection of claim 11.

As for claim 26, the claim rejected based on the same rationale as in the rejection of claims 12,4-6,10-11.

Claim 42 rejected based on the same rationale as in the rejection of claim 10.

Response to Arguments

Applicant's arguments in response to the last office action have been fully considered but they are not persuasive. Examiner respectfully traverses Applicant's arguments for the following reasons:

As to the remarks on page 10 concerning claims 7,21,37. Applicant argues that Zalewski does not teach "detecting each resource as the resource is initialized (reboot), detecting when at least one required resource for the selected logical partition is not powered up, initiating power up of the at least one required resource that is not powered up. and starting the selected logical partition when all required resources owned by the selected logical partition have been detected. Examiner respectfully disagrees. Zalewski's paragraph 54 describes using the list of resources saved previously to allow for an automatic configuration during subsequence reboot; Thus this teaching meets the claim's limitation of "detecting detecting each resource as the resource is initialized (reboot); Zalewski further describes during the reboot, the resources are being validated and if enough "required" resource, for example certain amount of memory, certain CPU resources are assigned to a partition; paragraph 53 lines 20-26; if so, the OS of that partition is allowed to run; paragraph 54. Zalewski further describes the resources are monitored to determine when they are powered up, the statutes are then recorded as available for the particular partition in the HRPB structure; paragraph 57). Thus again, Zalewski taught in above paragraphs the claim's limitation of "detecting when at least one required resource for the selected logical partition is not powered up, initiating power up of the at least one required

resource that is not powered up. and starting the selected logical partition when all required resources owned by the selected logical partition have been detected”.

Claims 21 and 37 have similar limitations as in claim 7, thus they are rejected based on the same rationale as in above paragraphs.

As to the remarks on page 11 concerning the claim 11. Applicant argues “the ability for an operating system in Zalewski to turn a CPU on and off does not read on initiating power off a plurality of resources owned by the selected logical partition” and Zalewski does not teach of “in response to the selected logical partition being powered off”. Examiner respectfully disagrees, Zalewski describes the CPUs logically assigned to each partition can be turned “on and “off” dynamically (Zalewski’s column 2, paragraph 11). Zalewski further describes the console program provide a mechanism to remove a resource such as a CPU from available CPUs within a partition in response to a shutdown for the instant operating system running in that partition; Zalewski’s paragraph 56. Thus Zalewski clearly teaches when the partition is shutdown, the corresponding resource such as CPU is powered down. The teaching by Zalewski deems to meet the claim’s limitation.

Claims 25,43 have similar limitations as in claim 11, therefore they are rejected based on the same rationale as in the rejection of claim 11.

Claims 12,26,44 have similar limitations as in claims 7, 11, therefore they are rejected based on the same rationale as in the rejection of claims 7 and 11.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Applicant's amendment filed 8/18/03 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

When responding to the office action, Applicant is advised to provide the examiner with the line numbers and page numbers in the application and/or references cited to assist examiner to locate the appropriate paragraphs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Doan whose telephone number is 571-272-4171. The examiner can normally be reached on M-F 8:00 AM 05:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on 571-272-4210. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin L. Ellis
Primary Examiner

